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REMARKS

Claims 1-2 and 12-34 remain pending in this application. Claims 1-2 and 12-34 have been rejected. Claim 1 has been amended to correct a typographical error where taurine had been incorrectly spelled as tourine.

Claims 1, 15, 18, 20, 21, 25, and 34 have been rejected under 35 U.S.C. § 103(a) as obvious over JP 60120950 (Sakuma) in view of U.S. Patent No. 4,629,625 (Gaul), "Surprise Ingredient in Coca Cola", "Book Tells Coke Recipe, but is it the Real Thing?," and "Jets Fuel is Like Kerosene." To establish a *prima facie* case of obviousness, it is necessary to show that all the claim limitations are taught or suggested by the prior art. *See In re Royka and Martin*, 180 USPQ 580, 583 (CCPA 1974); MPEP § 2143.03.

The Office Action admits that Sakuma does not disclose a spread comprising taurine and relies on Gaul for this teaching. The Office Action states that taurine helps maintain cell homeostasis and that therefore it would have been obvious to include taurine in the product of Sakuma in order to achieve the same benefits taught by Gaul. However, the Federal Circuit has stated that obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *See In re Bell*, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (emphasis added). The Office Action has not demonstrated any teaching or suggestion to use taurine in the product

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disclosed in Sakuma. There is no disclosure or suggestion in Sakuma that cell homeostasis is desired and therefore there is no motivation to combine the references. "One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fine*, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). The Office Action is impermissibly picking and choosing among isolated disclosures when stating that it would be obvious to use taurine in the product disclosed in Sakuma since there is no motivation for their combination. The Office action has provided no evidence that Sakuma discloses or suggests that maintaining cell homeostasis is desired. Accordingly, *prima facie* obviousness has not been demonstrated and claim 1 is patentable over the cited art.

The Federal Circuit has stated that virtually all inventions are combinations of old elements and that if identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. *See In re Rouffet*, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998). The Court also stated that "finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention," which would be an illogical and inappropriate process by which to determine patentability. *See In re Rouffet*, 47 USPQ2d 1453, 1457-1458 (Fed. Cir. 1998). Gaul discloses a composition containing taurine and discloses that taurine helps cell homeostasis. Sakuma does not disclose or suggest that cell homeostasis is a problem that is to be resolved nor

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does it even disclose or suggest anything pertaining to cell homeostasis. Thus, the Examiner is improperly combining references and is doing precisely what the Federal Circuit has stated is impermissible, which is to argue that something is obvious because it is known in the art and not because there is any suggestion or motivation for the combination. Thus, the combination of Sakuma and Gaull is improper and it is respectfully requested that it be withdrawn.

The Office Action states on page 2 that "Sakuma discloses the spread containing a cola beverage, which would be expected to contain the several of the claimed ingredients, since cola beverages generally contain caffeine. . ." Sakuma does not implicitly or explicitly disclose having caffeine. The Office Action's statement is, essentially, stating that caffeine is an inherent ingredient in the cola beverage disclosed in Sakuma.

The Federal Circuit has stated that inherency may not be established by probabilities or possibilities and the mere fact that a certain thing may result from a given set of circumstances is not sufficient. *See In re Robertson*, 59 USPQ2d 1949, 1951 (Fed. Cir. 1999). Thus, the Examiner's statement that "cola beverages generally contain caffeine," even if, *arguendo*, were correct, would be insufficient to establish inherency. The Office Action has not established that caffeine is necessarily present in the cola beverage disclosed in Sakuma. To the contrary, the Examiner's statement that "cola beverages generally contain caffeine" (emphasis added) implicitly acknowledges that not all cola beverages contain caffeine. Thus, the Office Action

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has not demonstrated that the cola beverage disclosed in Sakuma inherently contains caffeine. Accordingly, claim 1, which recites caffeine, is patentable over Sakuma.

The Office Action makes a similar argument as that for caffeine regarding citric acid, water, caramel syrup/aroma, and sugar and/or starch syrup, and lime juice/aroma. Just like with caffeine, inherency of the contents of these ingredients has not been demonstrated.

The Office Action also states on page 2 that "it would have been obvious to use such a cola in the product of Sakuma if such a flavor was found to be desirable."

It is unclear which flavor is included in this statement. In any event, the Federal Circuit has stated that there must be suggestion or motivation to combine references. *See In re Mills*, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990) (emphasis added); MPEP § 2143.01. The statement that something is obvious if it is found to be desirable does not establish *prima facie* obviousness unless the Office Action demonstrates that it is, in fact, desirable. Otherwise, the suggestion or motivation for the combination is absent, which precludes the establishment of *prima facie* obviousness. Accordingly, claims 1, 15, 18, 20, 21, 25, and 34 are patentable over the cited art and notice to that effect is respectfully requested.

The Office Action states that cola beverages commonly use starch syrup. However, Applicant respectfully requests that the Examiner provide documentary evidence to demonstrate this. Applicant has been unable to find in the documents cited by the Examiner information regarding the use of starch syrup in cola

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beverages. Thus, Applicant believes that the references cited by the Examiner fail to disclose a cola beverage having any of the ingredients recited in claims 15 and 25. Accordingly, claims 15 and 25 are patentable at least for this reason.

Claims 1, 15-18, 20, 21, 25, 26, 29, and 34 have been rejected under 35 U.S.C. § 103(a) as obvious over DE 19736429 (Altvater), in view of U.S. Patent No. 4,629,625 (Gaul), "Surprise Ingredient in Coca Cola", "Book Tells Coke Recipe, but is it the Real Thing?," and "Jets Fuel is Like Kerosene."

The Office Action admits that Altvater does not disclose a spread comprising taurine and relies on Gaul for this teaching. The Office Action states that taurine helps maintain cell homeostasis and that therefore it would have been obvious to include taurine in the product of Altvater in order to achieve the same benefits taught by Gaul. As stated above, the Federal Circuit has stated that obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *See In re Bell*, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (emphasis added). The Office Action has not demonstrated any teaching or suggestion to use taurine in the product disclosed in Altvater. There is no disclosure or suggestion in Altvater that cell homeostasis is desired and therefore there is no motivation to combine the references. "One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fine*, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). Similarly to the situation described above

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pertaining to Sakuma, the Office Action is impermissibly picking and choosing among isolated disclosures when stating that it would be obvious to use taurine in the product disclosed in Altwater since there is no motivation for their combination. The Office action has provided no evidence demonstrating that Altwater discloses or suggests the desirability of maintaining cell homeostasis. Accordingly, *prima facie* obviousness has not been demonstrated and claim 1 is patentable over the cited art.

Claim 17 recites a thickening agent that comprises carob bean flour. None of Alvater, Gaul, "Surprise Ingredient in Coca Cola", "Book Tells Coke Recipe, but is it the Real Thing?," or "Jets Fuel is Like Kerosene" disclose carob bean flour. Accordingly, claim 17 is further patentable over the cited art at least because carob bean flour is not disclosed or suggested in the cited art.

The Office Action states that some ingredients are generally present in cola beverages such as caramel syrup/aroma and lime juice/aroma. However, as stated above, the Federal Circuit has stated that inherency may not be established by probabilities or possibilities and the mere fact that a certain thing may result from a given set of circumstances is not sufficient. *See In re Robertson*, 59 USPQ2d 1949, 1951 (Fed. Cir. 1999). The Examiner has not demonstrated that all cola beverages inherently contain caramel syrup/aroma and lime juice/aroma. Accordingly, claims 20 and 21 are patentable over the cited art.

The Office Action states that cola beverages commonly use starch syrup. However, Applicant respectfully requests that the Examiner provide documentary

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evidence to demonstrate this. Applicant has been unable to find in the documents cited by the Examiner information regarding the use of starch syrup in cola beverages. Thus, Applicant believes that the references cited by the Examiner fail to disclose a cola beverage having any of the ingredients recited in claim 25. Accordingly, claim 25 is further patentable for this reason.

The Office Action also states on page 4 that "it would have been obvious to use such a cola in the product of Altwater if such a flavor was found to be desirable."

It is unclear which flavor is included in this statement. In any event, the Federal Circuit has stated that there must be suggestion or motivation to combine references. *See In re Mills*, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990) (emphasis added); MPEP § 2143.01. The statement that something can be used "if such a flavor was found to be desirable" does not demonstrate a suggestion or motivation to combine and is insufficient, as a matter of law, to meet the requirements of *prima facie* obviousness. Accordingly, claims 17, 20, 21, and 25 are patentable over the cited art and notice to that effect is respectfully requested.

Claims 1, 15, 16, 18, 20, 21, 25, and 34 have been rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 4,197,325 (Ono et al.) in view of U.S. Patent No. 4,629,625 (Gaul), "Surprise Ingredient in Coca Cola", "Book Tells Coke Recipe, but is it the Real Thing?", and "Jets Fuel is Like Kerosene."

The Office Action admits that Ono et al. does not disclose a spread comprising taurine and relies on Gaul for this teaching. The Office Action states

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that taurine helps maintain cell homeostasis and that therefore it would have been obvious to include taurine in the product of Ono et al. in order to achieve the same benefits taught by Gaull. As stated above, the Federal Circuit has stated that obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *See In re Bell*, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (emphasis added). The Office Action has not demonstrated any teaching or suggestion to use taurine in the product disclosed in Ono et al. There is no disclosure or suggestion in Ono et al. that cell homeostasis is desired and therefore there is no motivation to combine the references. "One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fine*, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). Similarly to the situation described above pertaining to Sakuma, the Office Action is impermissibly picking and choosing among isolated disclosures when stating that it would be obvious to use taurine in the product disclosed in Ono et al. since there is no motivation for their combination. The Office action has provided no evidence demonstrating that the invention of Ono et al. discloses or suggests that maintaining cell homeostasis is desired. Accordingly, *prima facie* obviousness has not been demonstrated and claim 1 is patentable over the cited art.

The Office Action states that some ingredients are generally present in cola beverages such as caramel syrup/aroma and lime juice/aroma. However, as stated

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above, the Federal Circuit has stated that inherency may not be established by probabilities or possibilities and the mere fact that a certain thing may result from a given set of circumstances is not sufficient. *See In re Robertson*, 59 USPQ2d 1949, 1951 (Fed. Cir. 1999). The Examiner has not demonstrated that all cola beverages inherently contain caramel syrup/aroma and lime juice/aroma. Accordingly, claims 20 and 21 are patentable over the cited art.

The Office Action states that cola beverages commonly use starch syrup. However, Applicant respectfully requests that the Examiner provide documentary evidence to demonstrate this. Applicant has been unable to find in the documents cited by the Examiner information regarding the use of starch syrup in cola beverages. Thus, Applicant believes that the references cited by the Examiner fail to disclose a cola beverage having any of the ingredients recited in claims 15 and 25. Accordingly, claims 15 and 25 are further patentable for this reason.

The Office Action also states on page 5 that "it would have been obvious to use such a cola in the product of Ono if such a flavor was found to be desirable." It is unclear which flavor is included in this statement. In any event, the Federal Circuit has stated that there must be suggestion or motivation to combine references. *See In re Mills*, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990) (emphasis added); MPEP § 2143.01. The statement that something can be used "if such a flavor was found to be desirable" does not demonstrate a suggestion or motivation to combine and is insufficient, as a matter of law, to meet the requirements of *prima facie* obviousness.

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Accordingly, claims 15, 20, and 25 are patentable over the cited art and notice to that effect is respectfully requested.

Claims 1, 2, 15-18, 20, 21, and 29 have been rejected under 35 U.S.C. § 103(a) as obvious over EP 0496426 (Fukuyama et al.) in view of U.S. Patent No. 4,629,625 (Gaul), "Surprise Ingredient in Coca Cola", "Book Tells Coke Recipe, but is it the Real Thing?," and "Jet Fuel is Like Kerosene."

The Office Action admits that Fukuyama et al. does not disclose a spread comprising taurine and relies on Gaul for this teaching. The Office Action states that taurine helps maintain cell homeostasis and that therefore it would have been obvious to include taurine in the product of Fukuyama et al. in order to achieve the same benefits taught by Gaul. As stated above, the Federal Circuit has stated that obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *See In re Bell*, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (emphasis added). The Office Action has not demonstrated any teaching or suggestion to use taurine in the product disclosed in Fukuyama et al. There is no disclosure or suggestion in Fukuyama et al. that cell homeostasis is desired and therefore there is no motivation to combine the references. "One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fine*, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). Similarly to the situation described above pertaining to Sakuma, the Office Action is

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impermissibly picking and choosing among isolated disclosures when stating that it would be obvious to use taurine in the product disclosed in Fukuyama et al. since there is no motivation for their combination. The Office action has provided no evidence demonstrating that the invention of Fukuyama et al. discloses or suggests the desirability of maintaining cell homeostasis. Accordingly, *prima facie* obviousness has not been demonstrated and claim 1 is patentable over the cited art.

Claim 2 recites, inter alia, trehalose. None of Fukuyama et al., Gaull, "Surprise Ingredient in Coca Cola", "Book Tells Coke Recipe, but is it the Real Thing?", or "Jets Fuel is Like Kerosene" disclose or recite trehalose. Accordingly, claim 2 is patentable over those cited documents since to establish a *prima facie* case of obviousness, it is necessary to show that all the claim limitations are taught or suggested by the prior art. See *In re Royka and Martin*, 180 USPQ 580, 583 (CCPA 1974); MPEP § 2143.03.

The Office Action states that cola beverages commonly use starch syrup. However, Applicant respectfully requests that the Examiner provide documentary evidence to demonstrate this. Applicant has been unable to find in the documents cited by the Examiner information regarding the use of starch syrup in cola beverages. Thus, Applicant believes that the references cited by the Examiner fail to disclose a cola beverage having any of the ingredients recited in claim 15. Accordingly, claim 15 is further patentable for this reason.

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Claim 17 recites, inter alia, carob bean flour. The Office Action listed claim 17 as rejected but did not explain why it was being rejected. None of Fukuyama et al., Gaull, "Surprise Ingredient in Coca Cola", "Book Tells Coke Recipe, but is it the Real Thing?," or "Jets Fuel is Like Kerosene" disclose or recite carob bean flour. Accordingly, claim 17 is patentable over those documents since to establish a *prima facie* case of obviousness, it is necessary to show that all the claim limitations are taught or suggested by the prior art. See *In re Royka and Martin*, 180 USPQ 580, 583 (CCPA 1974); MPEP § 2143.03.

The Office Action states that some ingredients are generally present in cola beverages such as caramel syrup/aroma and lime juice/aroma. However, as stated above, the Federal Circuit has stated that inherency may not be established by probabilities or possibilities and the mere fact that a certain thing may result from a given set of circumstances is not sufficient. See *In re Robertson*, 59 USPQ2d 1949, 1951 (Fed. Cir. 1999). The Examiner has not demonstrated that all cola beverages inherently contain caramel syrup/aroma and lime juice/aroma. Accordingly, claims 20 and 21 are patentable over the cited art.

Claim 29 recites, inter alia, corn starch. The Office Action listed claim 29 as rejected but did not explain why it was being rejected. None of Fukuyama et al., Gaull, "Surprise Ingredient in Coca Cola", "Book Tells Coke Recipe, but is it the Real Thing?," or "Jets Fuel is Like Kerosene" disclose or recite corn starch. Accordingly, claim 29 is patentable over the cited art since to establish a *prima facie*

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case of obviousness, it is necessary to show that all the claim limitations are taught or suggested by the prior art. *See In re Royka and Martin*, 180 USPQ 580, 583 (CCPA 1974); MPEP § 2143.03.

The Office Action also states on page 6 that "it would have been obvious to use such a cola in the product of Fukuyama if such a flavor was found to be desirable." It is unclear which flavor is included in this statement. In any event, the Federal Circuit has stated that there must be suggestion or motivation to combine references. *See In re Mills*, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990) (emphasis added); MPEP § 2143.01. The statement that something can be used "if such a flavor was found to be desirable" does not demonstrate a suggestion or motivation to combine and is insufficient, as a matter of law, to meet the requirements of *prima facie* obviousness. Accordingly, claims 15, 20, and 21 are patentable over the cited art and notice to that effect is respectfully requested.

Claims 2, 12-14, 19, 22-24, 27, 28, and 30-33 have been rejected under 35 U.S.C. § 103(a) as obvious over Sakuma, Alvater, Ono, and Fukuyama, in view of Gaul, "Surprise Ingredient in Coca Cola", "Book Tells Coke Recipe, but is it the Real Thing?," and "Jet's Fuel is Like Kerosene," as applied above, in further view of U.S. Patent No. 5,223,300 (Brinkers), U.S. Patent No. 3,600,196 (Heine et al.), U.S. Patent No. 5,935,636 (Nishimoto et al.), U.S. Patent No. 5,688,548 (Gaither et al.), and U.S. Patent No. 5,137,742 (Bakal et al.).

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The Office Action stated on page 7 that "the ingredients claimed by Applicant were well known to one of ordinary skill in the art as discussed above." The Federal Circuit has stated that the level of skill in the art cannot be relied upon to provide the suggestion to combine references. *See Al-Site Corp. v. VSI Int'l Inc.*, 50 USPQ2d 1161, 1171 (Fed. Cir. 1999). Thus, whether one of ordinary skill in the art knows about the particular ingredients disclosed in the present application is not sufficient to establish obviousness, but merely a prerequisite.

The Office Action, on page 7, states that "Sakuma, Altvater, Ono, and Fukuyama all disclose the use of a cola beverage in a spread, which would be expected to contain water, sugar, caramel syrup, citric acid, cola aroma, and caramel aroma, as discussed above." As explained above, inherency requires that it be shown that the inherent disclosure must necessarily be present, not merely that it may be present. Accordingly, what the Office Action says would be expected to be in a cola beverage is not sufficient demonstration of the inherency of these ingredients to be included in a cola beverage.

The Office Action states on page 7 that Sakuma discloses the inclusion of a starch syrup, a sauce material made from fruit, and thick malt syrup. Applicant respectfully requests that the Examiner point out where in Sakuma is disclosed a starch syrup. Alternatively, Applicant respectfully requests that the Examiner acknowledge the patentability of claims 12 and 22, which recite starch syrup.

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The Office Action cites to Brinkers, column 3, lines 34-39, as including milk and/or curds in a spread. As is clear from Brinkers, column 3, lines 34-39, the curds are added as a source of protein. The Office Action has not provided motivation for adding a protein-containing ingredient to any of the other references cited. The Office Action has not demonstrated that any of the cited references discloses or suggests that the addition of protein is desirable. Accordingly, *prima facie* obviousness has not been demonstrated. Thus, claim 33 is patentable over the cited art.

The Office Action states that Heine, in column 2, lines 15-25, discloses the inclusion of nougat in a spread as a source of fat. Column 2, lines 15-25 of Heine recite as follows:

The sugar used in the compositions is preferably the commercial form of powdered sugar although any dry form of sugar may be used. The other powdery ingredients may be powdered milk, powdered egg, powdered chocolate, finely chopped nuts, powdered coffee, etc. Depending on the requirements of the cream product, aromatic and flavoring substances may also be added. Some of these powdery ingredients such as chocolate and nougat contain fats and preferably the total shortening content of the cream product should not exceed 70%, and more preferably 65%.

Thus, it is clear that the nougat is not being specifically used as a source of fat. Rather, the fact that nougat includes fat is being noted to ensure that the fat content does not exceed a certain level. Thus, there is no teaching in Heine et al. that nougat is something that is to be used as a source of fat. Moreover, the Office Action has

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not provided any evidence that any of the documents cited by the Office Action disclose or suggest that adding nougat because of its fat content is desirable. Furthermore, even if a document cited by the Office Action discloses the use of butter or other fats, there is no disclosure or suggestion that just because nougat contains fat that it is a known equivalent for butter or other fats. Accordingly, *prima facie* obviousness is absent since no motivation or suggestion for a combination has been demonstrated. Accordingly, claims 13, 19, 23, and 30-32 are patentable over the cited documents.

The Office Action states that the Abstract of Gaither discloses the use of applesauce as a low fat alternative to butter, oil, or shortening in food products. However, the Office Action did not state what suggestion or motivation there is to utilize this applesauce in any of the other cited references. The Office Action did not identify any references which utilize butter, oil, or shortening and which disclose or suggest the desirability of replacing said butter, oil, or shortening with a low fat alternative. In any event, Gaither discloses the substitution of shortening with applesauce in baked goods. The references cited by the Examiner are not baked goods so any substitution of shortening for applesauce in the cited references would not be taught or suggested by Gaither. Accordingly, claims 12, 19, 22, and 30 are patentable over the cited documents.

The Office Action, on page 7, cites *In re Levin*, 84 USPQ 232 (CCPA 1949) for the proposition that “[n]ew recipes of formulas for cooking food, which

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involve addition or elimination of common ingredients, or for treating them in ways which differ from former practice, do not amount to invention merely because it is not disclosed that no one else ever did what Applicant did; Applicant must establish co action or cooperative relationship between ingredients which produces new, unexpected and useful function.” The Federal Circuit has stated that to establish a *prima facie* case of obviousness, it is necessary to show that all the claim limitations are taught or suggested by the prior art. *See In re Royka and Martin*, 180 USPQ 580, 583 (CCPA 1974); MPEP § 2143.03. Any interpretation of *In re Levin* that would deviate from the requirement that *prima facie* obviousness requires a showing that all the claim limitations are taught or suggested by the prior art is not an appropriate interpretation. Furthermore, the Federal Circuit has stated that the teaching of references can be combined *only* if there is some suggestion or incentive to do so. *See In re Fine*, 5 USPQ2d 1596, 1599 (Fed. Cir. 1988). Any interpretation of *In re Levin* that is inconsistent with the requirement for suggestion or incentive to combine references is also not an appropriate interpretation since it would be inconsistent with the Federal Circuit’s rulings. Accordingly, it is the burden of the U.S. Patent Office to demonstrate *prima facie* obviousness of each claim (including each element) before the Applicant is required to rebut *prima facie* obviousness by a showing of unexpected results. Any interpretation of *In re Levin* to the contrary would contravene well-established and court-approved principles

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of U.S. patent law. Furthermore, the current application is directed to the composition and method of manufacturing a spread and is not directed to cooking food. Merely because an edible composition is disclosed in a patent application does not mean that the claims are directed to cooking food.

The Office Action states, on pages 7-8, that “[a]s all of the ingredients used in the spread claimed by Applicant were well known in the art of spreads, and no unexpected result has been provided, it would have been obvious to alter the amounts and specific combination in order to achieve a spread with a desired taste and texture.” However, as stated above, the level of skill in the art cannot be relied upon to provide the suggestion to combine references. *See Al-Site Corp. v. VSI Int'l Inc.*, 50 USPQ2d 1161, 1171 (Fed. Cir. 1999). Thus, *prima facie* obviousness has not been established. The mandatory requirement of the Federal Circuit that a suggestion or incentive be shown to combine references must be followed. Thus, there must be motivation for any combinations of any references. Also, the Office Action has not provided any evidence to show that “it would have been obvious to alter the amounts [of ingredients] and specific combination in order to achieve a spread with the desired taste and texture.” In any event, the invention is more than just “taste and texture,” as suggested in the Office Action. For example, the specification on page 1, sixth full paragraph states that an “object is to create a spread that stimulates circulation.” Additionally, the specification discloses a

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spread which has "properties protecting teeth and which do not have a laxative effect," as described on the first full paragraph of page 2 of the specification. Additionally, in the paragraph bridging pages 3-4 of the specification is described a way to produce the spread easily and quickly. Furthermore, the specification, on page 2, sixth full paragraph, states that the use of taurine in the present invention plays an important role in the development of the central nervous system. Thus, there are many advantageous characteristics of the invention of the above-identified application and *prima facie* obviousness has not been demonstrated regarding the claims of the above-identified application. The Office Action states, on page 9, that "Applicant claims that the object is to create a spread that stimulates circulation; however, no evidence has been provided demonstrating that this objective is indeed achieved and that the prior art does not also achieve this objective." The disclosure of this specification is sufficient to describe the benefits of the invention and Applicant is not aware of any requirement that extrinsic evidence must be additionally provided to confirm the benefits of this specification's disclosure.

The USPTO is hereby authorized to charge any fee(s) or fee(s) deficiency or credit any excess payment to Deposit Account No. 10-1250.

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In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited.

Respectfully submitted,
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